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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CESAR LOPEZ-FLORES,

Plaintiff and Appellant,

v.

CALIFORNIA STATE
PERSONNEL BOARD,

Defendant and Respondent.

CALIFORNIA DEPARTMENT
OF CORRECTIONS &
REHABILITATION,

Real Party in Interest and
Respondent.

B289834

(Los Angeles County
Super. Ct. No. BS166127)

APPEAL from a judgment of the Superior Court of
Los Angeles, Mary H. Strobel, Judge. Affirmed.

Robert Lucas Law and Robert W. Lucas for Plaintiff and
Appellant.

Alvin Gittisriboongul and Chian He for Defendant and
Respondent California State Personnel Board.

Michael P. Doelfs for Real Party in Interest and
Respondent California Department of Corrections and
Rehabilitation.

Prior to July 2015, petitioner Cesar Lopez-Flores worked as a correctional officer. His responsibilities included keeping inmates safe. The Department of Corrections and Rehabilitation (Department) dismissed him because he arranged for a fight among inmates housed at the correctional facility where Lopez-Flores worked. Lopez-Flores appealed his termination, and following an administrative hearing, both the Administrative Law Judge and State Personnel Board (Board) found that the evidence supported the Department's decision to dismiss Lopez-Flores.

This appeal is from the trial court's judgment denying Lopez-Flores's petition for writ of mandate to reverse the Board. Lopez-Flores does not dispute that allowing inmates to fight would constitute misconduct, but argues substantial evidence did not support the Board's finding that he allowed inmates to fight. We conclude that under the appropriate standard of review, substantial evidence supported the Board's finding that Lopez-Flores arranged fights among inmates and later lied about his misconduct.

We further reject Lopez-Flores's argument that the Board abused its discretion in dismissing him. By arranging fights among the inmates, Lopez-Flores "forfeited the trust of his office and the public." (*Kolender v. San Diego County Civil Service*

Com. (2005) 132 Cal.App.4th 716, 721.) Lopez-Flores jeopardized the safety of the inmates, in derogation of his duty to maintain their safety. We affirm the trial court’s judgment, which upheld the Board’s findings and dismissal penalty.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Lopez-Flores’s Employment and Duties*

On January 1, 2008, the Department hired Lopez-Flores as a correctional officer. He served as a correctional officer for six and a half years. Lopez-Flores’s “responsibilities included maintaining the safety and security of the institution, staff, and inmates.” Lopez-Flores oversaw the inmate yard crew, who in turn was responsible for the landscaping around the prison.

2. *Department’s Operations Manual*

Lopez-Flores received training on the policies contained in the Department’s operations manual.

The Department’s operations manual specified a code of conduct. The code of conduct required all employees to “[d]emonstrate professionalism, honesty, and integrity.” It also required employees to “[t]reat fellow employees[and] inmates . . . with dignity and respect.”

Lopez-Flores was familiar with the law enforcement code of ethics contained in the Department’s operations manual. It provided: “Peace officers employed by the Department are held to a higher standard of conduct.” “As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against

violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.” (Italics omitted.)

3. *On June 2, 2014, Inmates Fight in the Yard*

On June 2, 2014, just after 11:00 a.m., two inmates beat Inmate Stallings while the inmates were on the yard. Stallings was seriously injured and left the yard on a gurney.

After the incident Lopez-Flores prepared a written report describing the fight. Lopez-Flores reported that on June 2, 2014, at 11:07 a.m., he observed Inmate Blanche strike Inmate Stallings. “Stallings fell backwards directly on his back, and landed on the sand.” Blanche then continued to strike Stallings. Inmate McQueen ran towards Stallings and swung his fists, but Lopez-Flores could not observe if McQueen made contact with Stallings.

4. *The Department Dismisses Lopez-Flores*

On July 6, 2015, the Department sent Lopez-Flores notice that he would be dismissed effective July 14, 2015. The principal allegation was that Lopez-Flores approved the above-described fight in which Stallings was injured and then later lied during an internal affairs interview.

After a hearing, the Department dismissed Lopez-Flores.

5. *Lopez-Flores Appealed His Dismissal to the Board*

Lopez-Flores appealed his dismissal to the Board. The following is a summary of evidence presented at the hearing before an administrative law judge (ALJ). The ALJ expressly credited the testimony of Officer Michael Becker, Officer Jose Plasencia (sometimes incorrectly spelled Plascencia),

and Officer Darlene Battle. The Board adopted all of the ALJ's findings and conclusions, including the ALJ's credibility findings.

a. Officer Becker's Testimony

According to Officer Becker, Lopez-Flores told Officer Becker that on June 2, 2014, Inmate Neal would assist with the yard crew and would provide the names of other inmates for Officer Becker to release to the yard. When Lopez-Flores made the request, Becker did not consider it unusual. Inmate Neal later requested Becker release three inmates to the yard, including Inmate McQueen.

Lopez-Flores subsequently asked Becker to release Inmate Stallings to the yard. Inmate Stallings was not part of the yard crew. Lopez-Flores asked Becker to release Stallings to work with the yard crew. Becker released the inmates, including Inmate Stallings, in accordance with Lopez-Flores's instructions.

When Lopez-Flores told Becker that the inmates "were going to go and resolve an issue on the yard," Becker told Lopez-Flores "he needed to send them back." Lopez-Flores ignored Becker.

Just before the inmate fight, Officer Becker observed that Lopez-Flores was with Officer Plasencia. Becker heard Lopez-Flores radio that two inmates were fighting Inmate Stallings, and observed Lopez-Flores respond to the fight.

Becker initially believed that Lopez-Flores's statement the inmates would "resolve an issue" meant that inmates would speak to other inmates to "keep it safe among the inmates . . . to eliminate fights and stuff." Later, when he learned that two inmates had beaten Inmate Stallings, Becker became suspicious and tried to contact Lopez-Flores. Becker testified that when he and Lopez-Flores spoke after the incident, Lopez-Flores provided

a reason for sending Stallings to the yard which differed from the reason Lopez-Flores had provided earlier. Specifically, Lopez-Flores told Becker that Stallings was released “for education,” not to assist the yard crew.

Becker testified that during their post-fight conversation, Lopez-Flores asked Becker, “[Y]ou mad, bro[?]” Becker said, “[Y]eah, I’m mad. . . . you got me caught up in the middle of something.” Lopez-Flores responded, “[D]on’t trip, me and Sergeant Thomas got this taken care of.” Sergeant Thomas was the program sergeant for the yard and was in charge of the housing units. Becker understood Lopez-Flores’s statement to mean that both Lopez-Flores and Thomas knew “what was going to happen.” Becker discussed with Officer Plasencia Becker’s suspicion that Lopez-Flores “set[] up” a fight.

b. Officer Jose Plasencia’s Testimony

Half an hour before the inmate fight on June 2, 2014, Lopez-Flores asked Officer Plasencia to request an inmate release because an instructor wanted to interview the inmate. Officer Plasencia called Officer Battle and requested the release. Officer Battle did not release the inmate because the inmate’s privilege to go to the yard previously had been revoked.

Officer Plasencia testified that on June 2, 2014, he was talking to Lopez-Flores when the inmate fight occurred. According to Plasencia, Lopez-Flores ran towards the incident.

c. Officer Darlene Battle’s Testimony

At the administrative hearing, Officer Darlene Battle confirmed that Officer Plasencia called her to request she send an inmate to the yard.

d. Testimony of Lopez-Flores

During his internal affairs interview, Lopez-Flores denied telling Officer Becker that the inmates would resolve an issue on the yard. Lopez-Flores also denied telling Officer Becker that “Sergeant Thomas and I got this.” Lopez-Flores denied speaking to Officer Plasencia just before the inmate fight.

Lopez-Flores testified at the administrative hearing that he did not set up the fight between Stallings and the other inmates. Lopez-Flores testified that he was not talking to Officer Plasencia at the time of the fight. Lopez-Flores admitted that he requested that Officer Becker release Stallings. Lopez-Flores denied asking Becker to release McQueen or other inmates.

Lopez-Flores believed that Officer Becker was upset with him and had a motive to lie,¹ but the Board did not credit Lopez-Flores’s belief, finding it “unpersuasive.”

6. *The Board’s Opinion*

The Board adopted the ALJ’s opinion including the following findings by the ALJ:

¹ Specifically, the Board found the following: “In May 2014, CO Becker received threats from a group of disgruntled inmates and was temporarily reassigned to the mailroom for safety reasons. Appellant was CO Becker’s union steward at the time. At [the] hearing, Appellant argued CO Becker was unhappy about the way his reassignment was handled, and that he bore animosity toward Appellant as a result. This argument is unpersuasive. The evidence established that CO Becker spent only a couple of days in the mailroom, was restored to his normal duties roughly two weeks before the fight occurred, and suffered no lasting adverse effects from the brief reassignment.”

—Lopez-Flores’s “testimony regarding events that occurred before and after the fight was inconsistent with all the percipient witnesses who testified at [the] hearing—each of whom were credible.”

—“The weight of the evidence established that Appellant [Lopez-Flores] intentionally arranged to allow inmates to fight in the yard to settle a score. Inmate Stallings was ambushed and seriously injured as a result, and CO [Correctional Officer] Becker was ensnared in an unseemly scheme.” Lopez-Flores “demonstrated a lack of professionalism, integrity, and honesty; showed disrespect for fellow employees and inmates; and failed to cooperate in an IA investigation.” Lopez-Flores violated the Department’s code of conduct.

The Board found that Lopez-Flores’s conduct implicated all of the following bases for imposition of discipline: inexcusable neglect of duty; insubordination; dishonesty; discourteous treatment; willful disobedience; and other failure of good behavior. The Board further concluded the Department’s decision to dismiss Lopez-Flores “was just and proper.” It reasoned that dismissal was an appropriate penalty, explaining: Lopez-Flores “repeatedly denied his involvement in arranging the fight and attempted to discredit his fellow employees by dishonestly denying various damaging statements that he made to them. His failure to take any responsibility for his actions suggests a strong likelihood of recurrence. . . . Moreover, [Lopez-Flores’s] various violations . . . fell well below the high standards expected of peace officers and unquestionably violated public trust, discredited . . . [his employer] and caused harm to the public service.

7. *The Trial Court Denied Lopez-Flores’s Petition for Writ of Administrative Mandamus*

Lopez-Flores petitioned for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5. The trial court denied the petition and issued a multi-page and detailed opinion explaining the trial court’s conclusion that the Board’s findings were supported by substantial evidence. The trial court also rejected Lopez-Flores’s argument that his dismissal was an abuse of discretion. Lopez-Flores timely appealed.

STANDARD OF REVIEW

“ ‘Review of disciplinary action by an appointing authority is directed in the first instance to the [State Personnel] Board. The Board acts as an adjudicatory body, weighing the evidence to determine the facts and exercising discretion to ascertain whether the charges sustained are sufficient for the discipline imposed. [Citation.]’ ” (*Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270, 281.)

“The scope of our review from a judgment on a petition for writ of mandate is the same as that of the trial court. [Citation.] To the extent factual questions are involved, the Board’s findings of fact are reviewed under the substantial evidence test.” (*Department of Corrections & Rehabilitation v. State Personnel Bd.* (2015) 238 Cal.App.4th 710, 716.)

Under the substantial evidence test, “ ‘[w]e do not reweigh the evidence; we indulge all presumptions and resolve all conflicts in favor of the board’s decision. Its findings come before us “with a strong presumption as to their correctness and regularity.” [Citation.] We do not substitute our own judgment if

the board's decision “ ‘is one which could have been made by reasonable people. . . .’ ” ” (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584.) “ ‘Substantial evidence’ is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” (*Ibid.*)

“Where findings are devoid of evidentiary support or are based upon inferences arbitrarily drawn and without reasonable foundation, or are contrary to facts universally accepted as true and judicially known, the administrative order will be reversed as not being supported by substantial evidence in the light of the whole record.” (*Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 273.)

The remedy the Board imposed—dismissal—is reviewed for abuse of discretion. (*Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869, 879.) “ ‘It is only in the exceptional case, when it is shown that reasonable minds cannot differ on the propriety of the penalty, that an abuse of discretion is shown.’ ” (*Ibid.*) “ ‘In considering whether [an abuse of discretion] occurred in the context of public employee discipline, we note that the overriding consideration in these cases is the extent to which the employee’s conduct resulted in, or if repeated is likely to result in, “[h]arm to the public service.” [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.’ [Citation.] The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability.” (*County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582.)

DISCUSSION

Government Code section 19572 enumerates causes for discipline of an employee. As noted, the Board found that all of the following causes for discipline applied: inexcusable neglect of duty; insubordination; dishonesty; discourteous treatment; willful disobedience; and other failure of good behavior. As Lopez-Flores argues, each cause for discipline was premised on the finding that Lopez-Flores arranged for inmates to fight in the yard. Therefore, the key issue is whether that finding was supported by substantial evidence. Lopez-Flores's principal argument on appeal is that the Board's finding that he arranged for an inmate fight was supported only by "supposition, conjecture, or guesswork."

We conclude substantial evidence supported the Board's finding that Lopez-Flores arranged for an inmate fight and was untruthful in the subsequent investigation. We therefore reject Lopez-Flores's substantive challenges to the grounds supporting his discipline. We also conclude the Board did not abuse its discretion in imposing the penalty of dismissal in light of Lopez-Flores's conduct.

A. Substantial Evidence Supported The Finding That Lopez-Flores Arranged For Inmates To Fight In The Yard

The following evidence supported the inference that Lopez-Flores arranged for the inmates to fight. On June 2, 2014, Lopez-Flores requested the release of several inmates to the yard, including Inmate Stallings. Lopez-Flores told Officer Becker that the inmates were "going to go and resolve an issue on the yard." Then when Becker told Lopez-Flores to return the inmates to

their cells, Lopez-Flores ignored Becker. Lopez-Flores later changed his reason for requesting Stallings's release, to wit, he requested Becker to release Stallings to education (as opposed to the yard).

Lopez-Flores's statement that the inmates were going to "resolve an issue" supported the inference that he knew the inmates would fight on the yard. Substantial evidence showed that Lopez-Flores arranged for the fight by ensuring that the inmates involved in the fight would be on the yard at the same time. Without Lopez-Flores's request to release those inmates, the fight would not have occurred in the yard that day. But for Lopez-Flores's conduct requesting Becker release inmates identified by Inmate Neal, McQueen, one participant in the fight would not have been released to the yard. Stated otherwise, McQueen was released at Lopez-Flores's instruction. Stallings, the victim, also would have remained in his cell. Moreover, Lopez-Flores spoke to Becker more than once to arrange for the release of these inmates.

We have relied heavily on Becker's testimony and reject Lopez-Flores's argument that Becker's testimony "breaks the bounds of reasonableness." The Board credited Officer Becker. This court does not reweigh the credibility determinations. (*Flowers v. State Personnel Bd.* (1985) 174 Cal.App.3d 753, 759.) "It also is well established that an appellate court may not substitute a decision contrary to that made by the board, '“even though such decision is equally or more reasonable, if the determination . . . is one which could have been made by reasonable people.”' " (*Id.* at p. 759.)

Lopez-Flores's remaining arguments challenging the sufficiency of the evidence to support the finding that he

arranged for an inmate fight ignore this court's standard of review. His argument that the Department could have provided other evidence such as the testimony of inmates is irrelevant to our task of determining whether the record contains substantial evidence to support the Board's finding.

Lopez-Flores's emphasis on Becker's initial lack of suspicion when Lopez-Flores requested Becker to release certain inmates in the yard is irrelevant. The issue is not whether Becker was or was not suspicious. The issue is whether substantial evidence supported the Board's finding that Lopez-Flores arranged a fight among the inmates. In any event, the Board could reject Becker's initial lack of suspicion and credit his later, fuller understanding of the events. Indeed, Becker sought to discuss his concern with Lopez-Flores, and Lopez-Flores made statements suggesting a consciousness of guilt. Specifically, Lopez-Flores indicated that he requested Stallings be released to education, not to the yard, and he intimated he and Sergeant Thomas had a plan so that Becker would not get in trouble after the fight ensued. Finally, given the standard of review, Lopez-Flores's reliance on testimony that he was an honest, efficient officer merely serves to demonstrate a conflict in the evidence. (See *Batson v. State Personnel Board* (1961) 188 Cal.App.2d 320, 324.) In short, under the appropriate standard of review, Lopez-Flores has failed to demonstrate error.

B. Because Substantial Evidence Supported That Lopez-Flores Arranged The Inmate Fight, He Has Failed To Show Any Error In The Board's Grounds For Imposing Discipline

Lopez-Flores argues that "[b]ecause the ALJ's finding that Lopez-Flores arranged the fight lacks substantial evidence, the

remaining charges fail for lack of substantial evidence.” Because we conclude that substantial evidence supported the finding that Lopez-Flores arranged a fight, all of the charges were supported by substantial evidence. Stated otherwise, Lopez-Flores fails to show that any ground for discipline was unsupported by substantial evidence.

The finding that Lopez-Flores arranged for the inmate fight supported the conclusion that Lopez-Flores engaged in an inexcusable neglect of duty. Lopez-Flores testified that “it’s misconduct for a correctional officer to allow inmates to fight.” By allowing inmates to fight, Lopez-Flores violated the Department’s code of conduct, demonstrated a lack of professionalism, and jeopardized the safety of the inmates he was employed to protect.

The record supported the conclusion that Lopez-Flores was dishonest in his interview with internal affairs and his testimony before the ALJ.² The ALJ’s credibility determinations adopted by the Board supported that conclusion.³ Further in his report,

² Lopez-Flores’s statements during his internal affairs interview were not inadmissible hearsay because they were offered against him in an action to which he was a party. (Evid. Code, § 1220.)

³ Lopez-Flores argues that “overwhelming” authority stands for the proposition that discipline imposed on the basis of dishonesty requires a finding that the employee obtained financial gain from his dishonesty. The only authority Lopez-Flores cites, however, is a dissenting opinion in *Cummings v. Civil Service Com.* (1995) 40 Cal.App.4th 1643, 1655. A dissenting opinion serves only to express the view of the dissenter. (*Wall v. Sonora Union High Sch. Dist.* (1966) 240 Cal.App.2d 870, 872.)

Lopez-Flores omitted information that he requested the release of the inmates, including Inmate Stallings. Inmate Stallings was released to the yard minutes before he was attacked.

Lopez-Flores's conduct in arranging for an inmate fight was discourteous to the inmates whom Lopez-Flores had a duty to protect. The misconduct bore a rational relationship to Lopez-Flores's employment and could "reasonably result in the impairment or disruption of a public service." (*Gray v. State Personnel Bd.* (1985) 166 Cal.App.3d 1229, 1232.) It was inconsistent with the Department's manual, with which Lopez-Flores was familiar. This supported the inference that Lopez-Flores willfully disregarded the manual governing his conduct and supported the conclusion that he acted in willful disobedience. Further, arranging fights among inmates constituted a failure of good behavior because he caused injury to an inmate he was charged with protecting.

C. Lopez-Flores Fails To Show The Department Abused Its Discretion In Dismissing Him

The Board's decision to dismiss Lopez Flores must stand unless we conclude the Board "patently abused its exercise of discretion by acting arbitrarily, capriciously, or beyond the bounds of reason." (*County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1615.) "The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability." [Citation.] Thus, 'in the context of public employee discipline,' the 'overriding consideration' is 'the extent to which the employee's conduct resulted in, or if repeated is likely to result in, "harm to the public service." [Citations.] Other relevant factors include the circumstances surrounding the

misconduct and the likelihood of its recurrence.’ [Citation.]” (*Ibid.*) Law enforcement officers “ ‘are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.’ [Citation.]” (*Hankla v. Long Beach Civil Service Com.* (1995) 34 Cal.App.4th 1216, 1224.)

There was substantial evidence that Lopez-Flores arranged a fight in the yard among inmates. This misconduct was severe enough to be likely to, and actually did cause serious injury to an inmate. Further, Lopez Flores’s conduct demonstrated indifference to inmate safety in direct contravention of Lopez-Flores’s duty to protect inmates. Lopez-Flores neither admitted nor accepted responsibility for the misconduct. He expressed no remorse for his misconduct thus supporting the inference that his misconduct could recur. (Cf. *In re Demergian* (1989) 48 Cal.3d 284, 296 [attorney’s acknowledgment of wrongfulness of conduct and remorse were mitigating factors in disciplinary proceeding].) Given these circumstances, the Board’s decision to dismiss Lopez-Flores was not arbitrary, capricious, or beyond the bounds of reason.

The misconduct in this case was at least as extreme as that in *Kolender v. San Diego County Civil Service Com.*, *supra*, 132 Cal.App.4th 716 in which the appellate court held that termination was the *only* appropriate penalty. In *Kolender*, Deputy Sheriff Timothy Berry lied to cover another deputy’s use of force against an inmate. “Berry’s wrongdoing implicated important values essential to the orderly operation of the office. He lied regarding a grave matter, and thereby forfeited the trust

of his office and the public.” (*Id.* at p. 721.) “The safety and physical integrity of inmates is one of the office’s paramount responsibilities.” (*Id.* at p. 722.) Jeopardizing the safety of an inmate therefore warranted termination based on Deputy Berry’s first offense. (*Ibid.*) The appellate court held that termination was the only appropriate penalty. (*Id.* at p. 721.)

It is true that both Berry and Lopez-Flores were dishonest regarding a grave matter. Berry lied to protect someone else, but worse yet, Lopez-Flores lied to protect himself. In addition to dishonesty, Lopez-Flores arranged for an inmate fight. In doing so, he jeopardized the safety of the inmates and placed the government at risk of incurring liability. The Board acted well within its discretion in dismissing Lopez-Flores.⁴

DISPOSITION

The judgment is affirmed. Each side is to bear his or its own costs.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

⁴ Dismissal would have been the appropriate penalty even if the only basis for discipline had been inexcusable neglect of duty. The extreme nature of a correctional officer arranging fights among inmates warranted the penalty of dismissal. The fact that the Board found numerous other grounds for discipline based on the same factual findings of misconduct does not detract from this common sense conclusion.